

Docket No.: 760-3 RES

#208

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PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Scott R. Smith et al.

Examiner: Michael H. Thaler

Application No.: 09/691,782

Group Art Unit: 3731

Filed: October 19, 2000

Confirmation No.: 3708

For: IMPROVED
COVERED STENT

Docket: 760-3 RES

Dated: June 4, 2003

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date: June 4, 2003

Signature: K.J. Goodhand/K.J. Goodhand

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION REQUESTING WITHDRAWAL OF ABANDONMENT
UNDER 37 C.F.R. §1.181(a)

Sir:

Applicants herein petition the Commissioner to withdraw a holding of Abandonment and enter the amendment dated November 5, 2002 for the above-referenced application. This Petition Under 37 C.F.R. §1.181(a) is being submitted in accordance with MPEP §711.03(c) as a Petition to Withdraw a Holding of an Abandoned Application because the Examiner failed to enter an amendment properly filed which should have been entered.

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Filing Date: October 19, 2000
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In an advisory action mailed December 9, 2002, the Examiner indicates that the amendment would not be entered because, "the new issues arise from the proposed amendment which, if entered, would result in a situation in which there would be no amendment relative to the patent (i.e. no difference between the patent and the application) and thus no error in the patent to provide grounds for this reissue application."

The Examiner's statement however, is not factually accurate. The Examiner contends that if claims 1-14 issued on this application, that there would be no difference, or no error from the original patent upon which the reissue is based. This is incorrect. Applicants submitted an Amendment and Response under 37 C.F.R. §1.116 on September 3, 2002 which amended original claims 5 and 7 of the application. The file history therefore reveals that the Examiner's statement in the advisory action is not accurate.

Because Applicants amended claims 5 and 7 based on the Examiner's suggestions, the patent would issue with notable differences between the original patent and the reissue patent. Applicants further elected these claims which were deemed allowable by the Examiner and reserved the right to prosecute reissue claims in a continuation application.

It is further established by the Code of Federal Regulations at 37 C.F.R. §1.176 and §1.177 that the practice of filing and the issuance of multiple reissue patents is accepted procedure. Applicants therefore respectfully request withdrawal of the holding of abandonment and entrance of the amendment by the Applicants.

According to MPEP §711.03(c) a Petition Under 37 C.F.R. §1.181(a) is appropriate where an application is not in fact abandoned. Withdrawal of the Holding of Abandonment is therefore requested. No fee is deemed necessary as stipulated in §711.03(c). This Petition is

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further being filed within the two-month time limit required by 37 C.F.R. §1.181(f) of two-months. Reconsideration is respectfully requested.

Respectfully submitted,



Mark E. Baron
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Attorney for Applicant(s)

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Smith, et al.
691,782
M. Thaler
ng Dated: 06/04/03
No.: _____

Filing Date: 10/19/2000
Art Unit: 3731
Attorney Docket: 760-3 RSS
Confirmation No.: 3708

- The U. S. Patent and Trademark Office date stamp will acknowledge receipt of the following:
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Applicant: S. Smith, et al.
Serial No.: 09/691,782
Examiner: M.H. Thaler
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